

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-CR-118

KEITH A. ROBERTS,

Defendant.

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**ORDER DENYING MOTION TO MODIFY RECORD**

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Defendant Keith A. Roberts has filed a motion to modify the record in the above matter to include thirty-eight numbered items. Roberts describes the items as “evidences [sic] not submitted by defendant-appellant’s former counsel, Jeffrey W. Jensen, or by Assistant U.S. Attorney, Timothy W. Funnell.” Roberts cites as authority Seventh Circuit Rule 10(e), which concerns the indexing of transcripts.

Roberts’ motion will be denied. Circuit Rule 10(e) is irrelevant to a motion to modify the record. Presumably, Roberts intended to cite Federal Rule of Appellate Procedure 10 which reads:

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

FRAP 10(e)(2) “allows amendment of the record on appeal only to correct inadvertent omissions, not to introduce new evidence.” *In re Application of Adan*, 437 F.3d 381, 389 N.3 (3rd Cir. 2006). Similarly, the Seventh Circuit has noted that it “will not enlarge the record to include material that the district court did not consider.” *United States v. Gray*, 611 F.2d 194, 196 N.1 (7th Cir. 1979).

Some of the items in Roberts’ list of thirty-eight additional items are already part of the record. If so, Roberts may simply designate them as portions of the record that he requests the court of appeals to consider on review. Items that are not already included in the record, however, are not to be admitted. Roberts has shown no grounds on which to supplement the record with items not already part of it. Accordingly, Roberts’ motion is denied.

**SO ORDERED** this 22nd day of March, 2007.

s/ William C. Griesbach

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William C. Griesbach

United States District Judge